

REMARKS

Reconsideration of this application is respectfully requested.

Claims 1-10 are pending in the application. Upon entry of this Amendment, claims 1 and 6 will be amended, and new claims 11-20 will be added.

The Examiner is thanked for indicating in the outstanding Office Action of November 14, 2008 that objected-to claims 6 and 7 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 6 has now been amended to include all of the limitations of its base claims 1, 4 and 5 to thereby overcome the Examiner's objection to claims 6 and 7 and place claims 6 and 7 in condition for allowance. Accordingly, no further comments regarding these claims will be made in this Amendment.

In the outstanding Office Action, the Examiner also rejected claims 1, 3-5 and 8-10 under 35 U.S.C. §102(b) as being anticipated by Bucalo (USP No. 4,783,109), and claim 2 under 35 U.S.C. §103(a) as being obvious in view of Bucalo. The Examiner's rejections are respectfully traversed.

For a claimed invention to be anticipated by a prior art reference, every element of the claim must be disclosed in the reference. Here, the claimed invention of the present application is neither anticipated nor obvious over the cited Bucalo reference because such reference does not disclose or suggest all of the limitations of the claimed invention recited in the rejected claims. With regard to the Examiner's rejection of claims 1, 3-5 and 8-10 under 35 U.S.C. §102(b) as being anticipated by Bucalo, independent claim 1 of

the present application has been amended to recite that the rack, which is attached to the mobile stretcher frame, is formed so that no part of the rack constitutes an obstacle for handling the legs and feet of a patient upon movement and medical actions and the patient can be lifted up onto the stretcher generally laterally in a stretched out position without the rack or the instrumentation blocking the patient. As such, amended independent claim 1 is not anticipated by Bucalo because Bucalo does not disclose a rack that does not block a patient that is lifted onto the stretcher laterally in a stretched out position.

Bucalo purports to disclose a system for holding critical care equipment onto a standard ambulance stretcher. The system includes a tubular structure that is comprised of five legs, 60, 62, 64, 66 and 68 that attach to the stretcher's tubular frame 48 and two tubular equipment support frames or rack 44 and 46 supported by all or some of the five legs. Two of the legs, 60 and 62, form a first similar pair of legs, while two other legs, 64 and 66, form a second similar pair of legs. Each of these legs and the fifth leg, 68, are attached on their top ends 80, 82, 84, 86 and 88, respectively, to top rack or shelf frame 44, which is shown in Figure 4 of Bucalo. At a level somewhat lower than that of the top rack 44 is a lower rack or shelf frame 46 attached to the rearmost two legs 64 and 66 of the frame shown in Figure 4. Rack 44 supports an upper shelf 98. Racks 44 and 46 are designed to support assorted pieces of equipment such as 40, 42 and 208 seen in Figure 2 of Bucalo.

Bucalo's frame 48 is different from the frame disclosed and claimed in the present application because it includes a patient loading side that is best seen in Figure 2 of Bucalo. The patient loading side is opposite the fifth leg 68 that provides additional support for the rack 44. The presence of fifth leg 68 and rear support leg 60 demonstrates that Bucalo's frame 48 is not formed so no part of it constitutes an obstacle for handling the legs and feet of a patient who is lifted up and onto the stretcher, generally laterally in a stretched out position. In this regard, the Examiner notes that there would no motivation for one of ordinary skill in the art to modify the fixed leg 68 of Bucalo's frame because Bucalo teaches having a "patient-loading side". 11/14/08 Office Action, p. 5. However, even assuming, *arguendo*, that there was some motivation to modify Bucalo with regard to leg 68, the patient loading side of Bucalo's system would still include an obstacle to laterally positioning a patient in a stretched out position on the stretcher. This obstacle would be rear support leg 60, which, as can be seen in Figures 2 and 3 of Bucalo, is positioned with respect to frame 48 and bed 50, such that it would be an obstacle to laterally positioning a patient in a stretched out position on the stretcher.

Similarly, new independent claim 11 describes a mobile stretcher with front legs being foldable and rear support legs being positioned on the frame so that no part of the rack or the medical instrumentation constitutes an obstacle to the legs and feet of a patient lifted laterally onto the stretcher, generally in a stretched out position. Thus, amended independent claim 1 and new independent claim 11 of the present application

are not anticipated by Bucalo. And, because rejected claims 3-10 and new claims 12-20 depend from independent claims 1 or 11, they are also not anticipated by Bucalo.

With regard to the Examiner's rejection of claim 2 under 35 U.S.C. §103(a), given the deficiencies in Bucalo discussed above, claim 2 is not obvious over Bucalo. Claim 2 is also not obvious over Bucalo and what the Examiner contends is "routine skill in the art" because the Examiner has failed to provide concrete factual evidence to support his §103(a) determination that the claims are not patentable.

The Federal Circuit has held that an examiner, when making factual findings for a §103(a) patentability determination of a claimed invention, must rely on "concrete factual evidence" to support a rejection of the claimed invention. *See In re Zurko*, 258 Fed.3d 1379, 1385-86 (Fed. Cir. 2001).

In *Zurko*, the claimed invention was directed to a method for more efficiently creating a secure or "trusted" computer environment. The Examiner rejected the claimed invention under 35 U.S.C. §103, relying on a combination of two prior art references, *i.e.*, the UNIX Operating System ("UNIX") and a program (Dunford, FILER Version 2.20 ("FILER 2")) for repeating potentially dangerous commands before execution. In sustaining the rejection, the Patent Office Board of Appeals" contended that even if the cited UNIX and FILER 2 references did not disclose a trusted path, 'it is basic knowledge that communication in trusted environments is performed over trusted paths' and, moreover, verifying the trusted command in UNIX over a trusted path is 'nothing more

than good common sense.'" *Zurko*, 258 F.3d at 1385. On appeal, the Federal Circuit rejected the Board's contentions, holding:

This assessment of basic knowledge and common sense was not based on any evidence in the record and, therefore, lacks substantial evidence support. As an administrative tribunal, the Board clearly has expertise in the subject matter over which it exercises jurisdiction. This expertise may provide sufficient support for conclusions as to peripheral issues. With respect to core factual findings in a determination of patentability, however, the Board cannot simply reach conclusions based on its own understanding or experience – or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings.

Zurko, 258 F.3d at 1385-86. (Emphasis added). The same is true with respect to the Examiner's rejection of claim 2 under §103(a) as being obvious over Bucalo. Thus, it is not proper for the Examiner to rely on assertions of what is "routine skill in the art" to support his §103(a) rejection of claim 2. Rather, The *Zurko* decision requires the Examiner to provide concrete factual evidence to support his determination that claim 2 is not patentable because it is obviousness over the cited Bucalo reference.

In view of the foregoing, it is believed that all of the claims pending in the application, *i.e.*, claims 1-20, are now in condition for allowance, which action is earnestly solicited. If any issues remain in this application, the Examiner is urged to contact the undersigned at the telephone number listed below.

ERIKSSON
Appl. No. 10/559,791
February 11, 2009

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: Robert A. Molan
Robert A. Molan
Reg. No. 29,834

RAM:drt
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100